

115TH CONGRESS  
1ST SESSION

# H. R. 4224

To authorize the temporary entry into the United States of alien crewmen employed on longline fishing vessels originating in Hawaii, to ensure that such aliens receive reasonable wages and working conditions, and to provide for appropriate enforcement and oversight of fishing companies employing such aliens.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 2, 2017

Ms. HANABUSA (for herself and Ms. GABBARD) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Education and the Workforce, and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To authorize the temporary entry into the United States of alien crewmen employed on longline fishing vessels originating in Hawaii, to ensure that such aliens receive reasonable wages and working conditions, and to provide for appropriate enforcement and oversight of fishing companies employing such aliens.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Sustainable Fishing  
3 Workforce Protection Act”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) ASSOCIATION OF EMPLOYERS.—The term  
7 “association of employers” means any nonprofit or  
8 membership association of owners, charterers, or  
9 managing operators of a longline fishing vessel, or  
10 the legal representative of any such individual or en-  
11 tity, that has its home port or an operating base in  
12 the State of Hawaii.

13 (2) D-3 NONIMMIGRANT.—The term “D-3 non-  
14 immigrant” means a nonimmigrant described in sec-  
15 tion 101(a)(15)(D)(iii) of the Immigration and Na-  
16 tionality Act, as added by section 3(a)(2).

17 (3) EMPLOYER.—The term “employer” means  
18 the owner, charterer, or managing operator of a  
19 longline fishing vessel, or the legal representative of  
20 any such individual or entity, that has its home port  
21 or an operating base in the State of Hawaii.

22 (4) LONGLINE FISHING VESSEL.—The term  
23 “longline fishing vessel” means a vessel which—

24 (A) is operating in accordance with section  
25 8103(b)(2)(B) of title 46, United States Code;

6 SEC. 3. NONIMMIGRANT VISA FOR ALIEN CREWMEN ON  
7 FISHING VESSELS OPERATING OUT OF HA-  
8 WAI.

9           (a) IN GENERAL.—Section 101(a)(15)(D) of the Im-  
10 migration and Nationality Act (8 U.S.C. 1101(a)(15)(D))  
11 is amended—

12                   (1) in clause (ii), by adding “and” at the end;  
13                   and

14 (2) by adding at the end the following:

15                 “(iii) an alien crewman serving in good faith as  
16 such in any capacity required for normal operations  
17 and service aboard a longline fishing vessel having  
18 its home port or an operating base in Hawaii who  
19 intends to land temporarily in Hawaii solely in pur-  
20 suit of work as a crewman and to depart from Ha-  
21 waii with the vessel on which the crewman arrived  
22 or some other vessel or aircraft;”.

23 (b) TREATMENT OF DEPARTURES.—In the adminis-  
24 tration of section 101(a)(15)(D) of the Immigration and  
25 Nationality Act, as added by subsection (a), an alien crew-

1 man shall be considered to have departed from Hawaii,  
2 Guam, or the Commonwealth of the Northern Mariana Is-  
3 lands after leaving the territorial waters thereof, without  
4 regard to whether the alien arrives in a foreign state be-  
5 fore returning to Hawaii, Guam, or the Commonwealth  
6 of the Northern Mariana Islands.

7 (c) DURATION.—A visa issued to an alien crewman  
8 under section 101(a)(15)(D)(iii) of the Immigration and  
9 Nationality Act—

10 (1) shall remain in effect during the 3-year pe-  
11 riod beginning on the date on which the visa is  
12 issued by the Secretary of State; and

13 (2) may be renewed for successive 3-year peri-  
14 ods under the same terms and conditions applicable  
15 to the issuance of a new visa to a nonimmigrant  
16 under such section.

17 (d) EFFECT OF TERMINATION OF EMPLOYMENT ON  
18 VISA STATUS.—

19 (1) IN GENERAL.—Except as provided under  
20 paragraph (2), a D-3 nonimmigrant whose employ-  
21 ment is lawfully terminated by his or her employer,  
22 or by an association of employers, before the end of  
23 the period described in subsection (c) shall depart  
24 the United States not later than 10 days after the  
25 effective date of such termination. The employer or

1 association of employers, as applicable, shall pay for  
2 the cost of transportation and subsistence necessary  
3 to return the alien to his or her country of origin.

4 (2) CHANGE IN EMPLOYMENT.—An employer or  
5 association of employers may employ a D-3 non-  
6 immigrant described in paragraph (1) or a D-3 non-  
7 immigrant who amicably terminates employment  
8 with another employer if the employer or associa-  
9 tion—

10 (A) enters into a written agreement with  
11 the D-3 nonimmigrant that complies with the  
12 requirements under section 4; and

13 (B) submits a copy of such agreement to  
14 the Secretary of Homeland Security, the Sec-  
15 retary of Labor, and such State and local enti-  
16 ties as may be required for compliance with  
17 State and local licensing and oversight of the  
18 employer.

19 **SEC. 4. PETITION REQUIREMENTS AND EMPLOYER RE-**  
20 **SPONSIBILITIES.**

21 (a) PETITION.—

22 (1) IN GENERAL.—An employer or association  
23 of employers may not employ an alien crewman on  
24 a longline fishing vessel unless—

1                             (A) the employer or association has filed a  
2                             petition with the Secretary of State to employ  
3                             the alien as a D-3 nonimmigrant on a longline  
4                             fishing vessel; and

5                             (B) the Secretary of State has approved  
6                             the petition.

7                             (2) FORM; CONTENTS.—The petition required  
8                             under paragraph (1) shall be in such form as deter-  
9                             mined by the Secretary of State, in consultation with  
10                             the Secretary of Homeland Security, and shall in-  
11                             clude—

12                             (A) the name, contact information, and  
13                             mailing address of the place of business of—

14                                 (i) the employer; or  
15                                 (ii) if the petition is submitted by an  
16                             association of employers, the employers  
17                             that are members of the association;

18                             (B) an attestation that workers who will be  
19                             issued visas under section 101(a)(15)(D)(iii) of  
20                             the Immigration and Nationality Act, as added  
21                             by section 3(a), are being employed in accord-  
22                             ance with section 8103(b)(2)(B) of title 46,  
23                             United States Code;

24                             (C) the number of visas sought by the em-  
25                             ployer or association of employers;

1                             (D) the name, place of business, and de-  
2                             scription of services provided by any foreign  
3                             third party engaged by the employer or associa-  
4                             tion of employers; and

5                             (E) such other information as the Sec-  
6                             retary of State deems necessary.

7                             (3) VISA ISSUANCE.—Upon receipt of a com-  
8                             pleted petition from an employer pursuant to para-  
9                             graph (1), the Secretary of State is authorized to  
10                            issue the requested number of D-3 nonimmigrant  
11                            visas to aliens to meet the employer's need.

12                             (4) ROLE OF ASSOCIATIONS OF EMPLOYERS.—

13                             (A) FILING BY ASSOCIATIONS OF EMPLOY-  
14                             ERS.—A petition to employ an alien or aliens as  
15                             D-3 nonimmigrants under this subsection may  
16                             be filed by an association of employers.

17                             (B) TREATMENT OF ASSOCIATIONS ACTING  
18                             AS EMPLOYERS.—If an association is a joint or  
19                             sole employer of D-3 nonimmigrants, the visas  
20                             issued pursuant to an approved petition sub-  
21                             mitted by the association under this subsection  
22                             may be used for the certified job opportunities  
23                             of any of its members and such workers may be  
24                             transferred among its members.

25                             (5) TRANSITIONAL VISAS.—

(A) IN GENERAL.—Employers or associations of employers shall petition the Secretary of State for temporary nonimmigrant visas for all alien crewmembers employed by the employer or association as of the date of the enactment of this Act. The Secretary of State shall issue such temporary visas to such alien crewmembers in accordance with this paragraph.

(B) NATIONAL SECURITY REVIEWS.—

(i) IN GENERAL.—The Secretary shall ensure that the presence of alien crew-members for whom D-3 nonimmigrant visas are sought under this subsection does not pose a national security threat.

(ii) EVALUATIONS.—In evaluating the potential national security threat of alien crewmembers under this subparagraph, the Secretary may—

(I) conduct individual or group interviews of alien crewmembers in Hawaii; and

(II) take any other action the Secretary determines necessary to de-

1                   termine whether alien crewmembers  
2                   pose a national security threat.

3                   (iii) ACTION.—If the Secretary deter-  
4                   mines that an alien crewmember poses a  
5                   national security threat, the Secretary  
6                   shall take appropriate action in accordance  
7                   with Federal law.

8                   (iv) EXPEDITIOUS REVIEWS.—The  
9                   Secretary shall conduct interviews and re-  
10                  lated evaluations under this subparagraph  
11                  as expeditiously as possible to minimize the  
12                  disruption to the commercial fishing work-  
13                  force.

14                  (C) PERIOD OF VALIDITY.—Visas issued  
15                  under subparagraph (A) shall be valid for the  
16                  longer of—

17                  (i) 1 year; or  
18                  (ii) the period beginning on the date  
19                  of issuance and ending 90 days after the  
20                  date on which the Secretary of State issues  
21                  regulations or other written guidance relat-  
22                  ing to the issuance of visas to D-3 immi-  
23                  grants in accordance with section  
24                  101(a)(15)(D)(iii) of the Immigration and  
25                  Nationality Act, as added by section 3(a).

1                             (D) PETITION.—Not later than 90 days  
2                             after the issuance of the regulations or other  
3                             written guidance described in subparagraph  
4                             (C)(ii) or within an alternate timeframe deter-  
5                             mined by the Secretary of State, employers and  
6                             associations of employers shall petition for D–  
7                             3 nonimmigrant visas for all of their alien crew-  
8                             members, including those who were issued tem-  
9                             porary visas under subparagraph (A). Employ-  
10                          ers or associations of employers may not seek  
11                          compensation or reimbursement from D–3 non-  
12                          immigrants for costs associated with applica-  
13                          tions for transitional visas or D–3 non-  
14                          immigrant visas.

15                         (b) LABOR AGREEMENTS.—

16                         (1) COMPONENTS.—After the approval of a pe-  
17                         tition and the issuance of D–3 nonimmigrant visas,  
18                         but before proceeding on a voyage of a longline fish-  
19                         ing vessel, an employer or association of employers  
20                         shall enter into a written agreement directly with  
21                         each D–3 nonimmigrant, in accordance with section  
22                         10601 of title 46, United States Code, that de-  
23                         scribes—

- 1                         (A) the responsibilities of, and costs to be  
2                         covered by, the employer or association of em-  
3                         ployers during the contract period;
- 4                         (B) the job duties to be performed and the  
5                         expected work during the contract period;
- 6                         (C) the terms of the wage, share, or other  
7                         compensation the employer or association of  
8                         employers will provide to the employee during  
9                         the contract period;
- 10                       (D) the responsibility of the employer or  
11                         association of employers—
- 12                         (i) to pay for or reimburse the em-  
13                         ployee in his or her first workweek for all  
14                         visa, visa processing, border crossing, and  
15                         other related fees (including those man-  
16                         dated by the Government) incurred by the  
17                         employee, other than passport expenses or  
18                         other charges primarily for the benefit of  
19                         the employee;
- 20                         (ii) to pay all recruitment costs; and
- 21                         (iii) to provide, or reimburse the em-  
22                         ployee for the costs of, transportation and  
23                         subsistence to and from the United States;
- 24                         (E) the terms of payment and provision or  
25                         reimbursement for transportation and subsist-

1           ence costs from the United States if the worker  
2           is dismissed or otherwise fails to complete con-  
3           tract term;

4           (F) the crewmember's rights (with respect  
5           to occupational safety and health protections)—

6               (i) to freely report any labor, safety,  
7               or health abuses without fear of retali-  
8               ation;

9               (ii) to have access to remediation, as  
10              needed;

11               (iii) to free and timely access to their  
12              passports or other identity documents; and

13               (iv) to adequate living conditions  
14              aboard the vessel, including access to food,  
15              water, medical care, and other necessary  
16              provisions;

17           (G) a summary of the remedies for viola-  
18              tions of the terms of the labor agreement avail-  
19              able to the employee in accordance with para-  
20              graph (2); and

21           (H) other agreed terms and conditions of  
22              employment.

23           (2) ENFORCEMENT OF AGREEMENTS.—Employ-  
24              ers or associations of employers and D-3 non-  
25              immigrants have the right to avail themselves of ap-

1        appropriate legal recourse in the United States, includ-  
2        ing voluntary arbitration, in the event of disputes  
3        arising due to nonperformance of any provision of  
4        an agreement.

5                 (3) LANGUAGE BARRIERS AND RECORD-  
6        KEEPING.—

7                 (A) IN GENERAL.—Employers or associa-  
8        tions of employers shall secure such language  
9        services as may be necessary to ensure that D–  
10      3 nonimmigrants understand the terms of the  
11      labor agreement described in subsection (b)  
12      that is presented to them before embarking on  
13      their first voyage on a longline fishing vessel  
14      and may not seek compensation or reimburse-  
15      ment from D–3 nonimmigrants for the provi-  
16      sion of such services.

17                 (B) RECORD RETENTION REQUIRE-  
18        MENTS.—A signed copy of each labor agree-  
19        ment shall be kept on file by the employer in  
20        English and in the language of the D–3 non-  
21        immigrant. Copies of signed labor agreements  
22        shall be submitted to the Secretary of Home-  
23        land Security, the Secretary of Labor, and such  
24        State and local entities as may be required for  
25        compliance with State and local licensing and

1           oversight of the employer or association of em-  
2           ployers.

3           (4) RECRUITMENT COSTS AND OVERSIGHT.—

4               (A) EMPLOYEE REIMBURSEMENT.—Em-  
5           ployers or associations of employers shall pay or  
6           reimburse each D-3 nonimmigrant, in his or  
7           her first workweek, for all visa, visa processing,  
8           border crossing, and other related fees (includ-  
9           ing those mandated by the Government) in-  
10          curred by the D-3 nonimmigrant, but are not  
11          required to reimburse D-3 nonimmigrants for  
12          passport expenses or other charges primarily  
13          for the benefit of the D-3 nonimmigrants.

14               (B) OTHER COSTS AND OVERSIGHT.—Em-  
15          ployers or associations of employers may engage  
16          agents or firms in the United States or else-  
17          where to recruit D-3 nonimmigrants only if the  
18          employer or association—

19                   (i) solely assumes all costs associated  
20                  with such recruitment services, including—

21                       (I) fees for the employers' attor-  
22                  neys and agents;

23                       (II) placement and referral fees;  
24                  and

(III) other fees required to be paid directly to the third party providing recruitment services; and

(ii) discloses the agents or firms used such recruitment to the Secretary of State.

(C) REPORT ON THIRD-PARTY RECRUITMENT PRACTICES.—

(i) REVIEW.—The Secretary of Labor shall review and evaluate the laws and business practices governing third-party recruitment of workers in Southeast Asian countries to determine whether third-party recruitment firms in such countries engage in—

(I) forced labor practices, including debt bondage; or

(II) practices that violate International Labour Organization standards or other relevant standards with respect to the recruitment of workers for jobs in the United States.

(ii) REPORT.—The Secretary of Labor  
1 submit a report to Congress that—

(I) summarizes the findings of the review conducted pursuant to clause (i); and

(II) may include—

(aa) suggested legislation or other recommendations for Congress and executive branch agencies; or

(bb) recommendations for private sector businesses regarding best practices for avoiding third-party recruitment firms in countries that the Secretary determines allow for, or engage in, forced labor practices that violate international law or other relevant standards and practices.

## **18 SEC. 5. ENFORCEMENT AND OVERSIGHT.**

**19 (a) EXAMINATIONS; REFERRALS.—**

1           lations affecting the safety and health of seamen, in-  
2           cluding D–3 nonimmigrants, aboard longline fishing  
3           vessels that have their home port or an operating  
4           base in Hawaii.

5           (2) ADDITIONAL EXAMINATIONS.—The Sec-  
6           retary of Homeland Security, in conjunction with the  
7           Secretary of Labor—

8               (A) may conduct additional examinations,  
9               as they consider necessary to ensure compliance  
10              with labor agreement terms and conditions or  
11              health and safety conditions; and

12               (B) shall conduct additional examinations  
13              upon receipt of information from a D–3 non-  
14              immigrant, or from such State or local entity as  
15              may be responsible for licensing and oversight  
16              of the employer, that an employer may be vio-  
17              lating the requirements under this Act or appli-  
18              cable health and safety requirements.

19           (b) PENALTIES FOR NONCOMPLIANCE.—The Sec-  
20           retary of Labor and the Secretary of Homeland Security  
21           are authorized to take such actions, including imposing  
22           appropriate penalties and seeking appropriate injunctive  
23           relief and specific performance of contractual obligations,  
24           as may be necessary to ensure employer compliance with

1 the terms and conditions of employment required under  
2 this Act.

3 **SEC. 6. RULEMAKING.**

4 The Secretary of State, the Secretary of Homeland  
5 Security, and the Secretary of Labor are authorized to  
6 issue such regulations and written guidance as may be  
7 necessary to carry out the activities required under this  
8 Act.

9 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

10 There is authorized to be appropriated such sums as  
11 may be necessary to carry out this Act.

